IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

FAO.No. 203 of 2004()

AS.174/1997 of I ADDL. DISTRICT COURT, TRIVANDRUM
OS.476/1994 of III ADDL.MUNSIFF'S COURT,TRIVANDRUM

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APPELLANT/3RD RESPONDENT/3RD DEFENDANT:

SUDHA DEVI, W/O. KUTTAPPAN,
KALLUMOOTTIL KADAVYIL VEEDU,
MUTTATHARA VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.ANIL K.NARENDRAN

RESPONDENTS/ APPELLANT & RESPONDENTS .1 & 2/
PLAINTIFF & DEFENDANTS 1&2:
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1. LAILA KUMARI, D/O. BABY AMMA,
RESIDING AT: VINOD VIHAR, ERAYAM LANE,
SREEVARAHAM, MUTTATHARA VILLAGE,
THIRUVANANTHAPURAM.

2. SOMAN, S/O. VELAYUDHAN PILLAI
MANGATTUKKONATHU PANAYIL VEEDU,
PATTUVILAKATHU MURI, AYROOPPARA VILLAGE,
POTHENCODE P.O., THIRUVANANTHAPURAM.

3. KUTTAPPAN, S/O. KUNJUKRISHNAN,
RESIDING AT: KALLUMMOOTTIL KADAYIL VEEDU
MUTTATHARA VILLAGE, HAVING RESIDENCE ALSO
AT: SREEKRISHNA BHAVAN, NEAR PONNARA SCHOOL,
MUTTATHARA VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.G.S. REGHUNATH
ADV. SMT.K.GIRIJA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 11/01/2007, ALONG WITH FAO NO. 205 OF 2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A. NO. 2619 OF 2004 IN F.A.O.No. 203 OF 2004

DISMISSED.

11.01.2007 SD/- K.T. SANKARAN, JUDGE.

/true copy/

P.A. TO JUDGE

K.T. SANKARAN, J.

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F.A.O. Nos. 203 & 205 OF 2004

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Dated this the 11th January, 2007

J U D G M E N T

These appeals are filed challenging the order of remand. There are two suits, viz., O.S. Nos. 476 of 1994 and 688 of 1994 filed respectively by Laila Kumari and Sudha Devi. Both the suits are for permanent prohibitory injunction. The trial court decreed O.S.No. 688 of 1994 filed by Sudha Devi and dismissed O.S.No. 476 of 1994 fled by Laila Kumari. Laila Kumari challenged the decision of the trial court in appeal. A.S.No. 174 of 1997 arose out of O.S.No. 476 of 1994 while A.S.No. 175 of 1997 arose out of O.S.No. 688 of 1994. The appellate court considered the contentions put forward by the respective parties and arrived at certain findings and remanded the case to the trial court to effectively work out the remedies on those findings. Sudha Devi challenges the decision of the lower appellate court.

2. The Property originally belonged to Kali Kalu who obtained the same as per a gift deed executed in her favour in 1095 M.E. Her great

grand children,viz., Kanakalatha, Prakasan and Ramesan and two children of Kanakalatha executed Ext. A3 assignment deed in favour of Kuttappan (second defendant in O.S.No. 476 of 1994) on 12.10.1984 as per Ext.A3 document No.2901/94. Kuttappan executed Ext.A2 assignment deed dated 25.08.1993-Document No.3226 /1993 in favour of Soman, the first defendant in O.S.No. 476 of 1994. In Ext. A2 there is a mention that though in the earlier title deed , viz., Ext.A3, the extent is shown as 2 cents, the actual extent of the property comes to 5 cents. Soman who acquired title as per Ext. A2 also got in his favour another assignment deed from one Madhavan as per Ext. B2 dated 17.09.1993. In Ext.B2, Madhavan claims 'Jenmam' right in respect of 2.125 cents and there is mention in Ext. B2 that possessory rights have already been given to Kuttappan earlier. Thus Soman got two assignment deeds in his favour, viz., Ext.A2 from Kuttappan and Ext. B2 from Madhavan. On 25.10.1993, as per document 4140/1993, Soman assigned an extent of 2 cents in favour of Laila Kumari, the plaintiff in O.S.No. 476 of 1994 and defendant in O.S.No. 688 of 1994. Soman also executed Ext.B1 assignment deed dated 08.03.1994 (document No.1205 of 1994) in respect of 2.125 cents in

favour of Sudha Devi, the third defendant in O.S.No. 476 of 1994 and the plaintiff in O.S.No. 688 of 1994.

3. Laila Kumari claimed that she is having title and possession over entire extent of 5 cents though in Ext. A1, the extent is shown as 2 cents. Such a case is not put forward in the plaint, but it is put forward in the evidence when P.W.1, husband of Laila Kumari was examined in the case. This contention is put forward on the basis that Ext. A2 executed by Kuttappan in favour of Soman shows that the extent actually available is 5 cents and that Soman has assigned the entire extent which he got, to Laila Kumari under Ext. A1. Sudha Devi, on the other hand contended that she has title to an extent of 2.125 cents and that the said property lies on the immediate eastern side of the National Highway. The total extent of 5 cents lies on the western side of a 'Thodu', on the southern side of Mukkolakkal temple road and on the eastern side of the National Highway. Sudha Devi claims that her 2.125 cents abuts the National Highway while Laila Kumari claims that she has title over the entire extent including 2.125 cents. Laila Kumari says that it is on the eastern side of the National Highway and not on immediate western side of the 'Thodu'. Laila

Kumari points out that in Ext.B2 executed by Madhavan in favour of Soman , it has been made clear that the extent of 2.125 cents dealt with in Ext.B2 is on the eastern side of Ext.A2 property having an extent of 2 cents. Sudha Devi claims title under Ext.B1 executed by Soman. The lower appellate court considered the facts and circumstances of the case, the pleadings and oral and documentary evidence in great detail and came to the conclusion that Laila Kumari can claim only an extent of 2 cents under Ext. A1 and that the said extent of 2 cents lies on the eastern side of the National Highway. The lower appellate court also found that the property covered by Ext. B1 in favour of Sudha Devi lies on the eastern of Ext.A1 property and that the said extent is to be located with proper boundaries.

4. The lower appellate court also noticed that after the decision of the trial court, a shed has come into existence in the disputed property which was constructed by Sudha Devi. The appellate court held that this construction is to be taken to have been made during the pendency of the suit, though the construction was made after the disposal of the suit, as the appeal is a continuation of the suit. The appellate court considered the

request made by Laila Kumari for a remand so as to amend the plaint to incorporate necessary reliefs in view of the subsequent developments and to fix boundary between Exts. A1 and B1 properties. The appellate court held that such a remand would be made. The appellate court held that it is also necessary to ascertain and fix eastern boundary of the plaint schedule property in O.S.No. 476 of 1994 and also to make necessary prayers for recovery of the property after dismantling the structure put up by Sudha Devi. Consequential directions were also issued by the appellate court as to how the matter should be dealt with by the trial court.

5. Learned counsel for the appellant in these appeals submitted that the lower appellate court was not justified in arriving at a conclusion that Ext.B1 property lies on the eastern side of Ext. A1 property and then remanding the case. He submits that having found that the Advocate Commissioners have not properly identified the property, the lower appellate court should have made an open remand and directed the trial court to arrive at a conclusion as to whether Ext.B1 property lies on the eastern side of the National Highway or on the eastern side of Ext. A1 property.

6. Learned counsel appearing for Laila Kumari, on the other hand, submitted that findings have been rendered against Laila Kumari making it impossible for her to claim anything in excess of 2 cents and that the remand has been made only for the purpose of implementing the findings already rendered by the appellate court in an effective manner. He also submits that the findings are correct on the facts and circumstances of the case and evidence on record.

I do not find any ground for interference. The appellate court has considered all the facts and circumstances of the cases and arrived at a conclusion, which according to me, is correct. The facts and circumstances brought out in evidence do not warrant interference in the well considered findings rendered by the appellate court. No substantial questions of law arise for consideration in these appeals. The appeals are accordingly dismissed. No orders as to costs.

K.T. SANKARAN,
JUDGE.

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